**Guarantee and Postponement of Claims Agreement**

****

This document is a Guarantee and Postponement of Claims Agreement (the “Agreement”) and is effective [DATE],

**BETWEEN: [FIRST GUARANTOR NAME]** (the "First Guarantor"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [SECOND GUARANTOR NAME]** (the "Second Guarantor"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

**AND: [CREDITOR NAME]** (the "Creditor"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

[COMPLETE ADDRESS]

IN CONSIDERATION OF the sum of [AMOUNT] and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Guarantor (jointly and severally with every other Guarantor) agrees with the Creditor as follows:

1. **GUARANTEED OBLIGATIONS**

The Guarantor irrevocably and unconditionally guarantees the due and punctual payment and performance of all debts, liabilities and obligations (collectively the “Guaranteed Obligations”) of [name of debtor] (the “Debtor”) to the Creditor whenever, however, or wherever incurred and any ultimate unpaid balance thereof.

1. **COSTS AND EXPENSES**

The Guarantor agrees to pay the Creditor, upon demand, all out-of-pocket costs and expenses (including, without limitation, legal fees on a solicitor and client basis) incurred by or on behalf of the Creditor in connection with enforcing any of its rights against the Debtor *in re*spect of the Guaranteed Obligations or against the Guarantor.

1. **RIGHT TO IMMEDIATE PAYMENT**

The Creditor shall not be bound to seek or exhaust its recourse against the Debtor or any other persons or to realise on any securities it may hold *in re*spect of the Guaranteed Obligations before being entitled to payment from the Guarantor under this agreement, and the Guarantor renounces all benefits of discussion and division.

1. **PAYMENT ON DEMAND**

The liability of the Guarantor shall be payable immediately upon written demand, and such demand shall be conclusively deemed to have been effectually made and given when an envelope containing such demand, addressed to the Guarantor, is delivered to the attention of the Guarantor at the address of the Guarantor set forth in this agreement or at such other address as the Guarantor may from time to time designate to the Creditor in writing. The liability of the Guarantor shall bear interest from the date of such demand and both before and after judgement  at the rate of [PERCENTAGE %] per annum.

1. **STATEMENT OF ACCOUNTS**

Any account settled or stated by or between the Creditor and the Debtor, or if any such account has not been so stated or settled prior to any demand for payment, any account stated by the Creditor shall, in the absence of manifest error, be accepted by the Guarantor as conclusive evidence that the amount of the Guaranteed Obligations so settled or stated is due and payable by the Debtor to the Creditor.

1. **LIABILITY ABSOLUTE**

The liability of the Guarantor hereunder shall be absolute and unconditional and shall not be affected by:

* 1. the invalidity, unenforceability or illegality, in whole or in part, of any agreements, instruments or other documents held by the Creditor to create, represent or evidence any Guaranteed Obligations;
  2. any defence, counterclaim or right of set-off available to the Debtor;
  3. any change in the name, objects, capital, constating documents or by-laws of the Debtor;
  4. any amalgamation, merger or re-organisation of the Debtor or, if a partnership, in the firm, including, without limitation, by reason of the death, retirement or admission for membership of any partners (in which case this agreement shall apply to the company or partnership, as the case may be, resulting or continuing therefrom); or
  5. any [YOUR COUNTRY LAW], regulation or other circumstance which might otherwise constitute, in whole or in part, a defence available to, or a discharge of, the Guarantor, the Debtor or any other persons, firms or companies *in re*spect of the Guaranteed Obligations or the liability of the Guarantor.

1. **DEALINGS BY CREDITOR**

The Creditor may, without giving notice to or obtaining the consent of the Guarantor, grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, whether full, partial, conditional or otherwise, perfect or final to perfect any securities, release any undertaking, property or assets charged by any securities to [NUMBER] [COMPANY NAME] and otherwise deal or fail to deal with the Debtor and others (including, without limitation, and other guarantors) and securities, hold any moneys received from the Debtor and others or from any securities unappropriated, apply such moneys against such part of the Guaranteed Obligations and change any such application in whole or in part from time to time, all as the Creditor may see fit, without prejudice to or in any way discharging or diminishing the liability of the Guarantor and no loss of or *in re*spect of any securities received by the Creditor from the Debtor or any other persons, whether occasioned through the fault of the Creditor or otherwise, shall in any way discharge or diminish the liability of the Guarantor.

1. **LIABILITY AS PRINCIPAL DEBTOR**

All debts, liabilities and obligations purporting to be incurred by the Debtor and owing to the Creditor shall form part of the Guaranteed Obligations notwithstanding any incapacity, disability, or lack or limitation of status or power of the Debtor or any of its directors, officers or agents or that the Debtor may not be a legal entity or any irregularity or defect or informality in the incurring of such debts, liabilities or obligations and any such debts, liabilities and obligations which may not be recoverable from the Guarantor as guarantor shall be recoverable from the Guarantor as principal debtor upon demand and with interest, calculated and payable as provided in this agreement.

1. **CONTINUING NATURE AND REINSTATEMENT**

This agreement is a continuing guarantee and shall apply to and secure payment of all Guaranteed Obligations and any ultimate unpaid balance thereof. This agreement shall be reinstated if at any time any payment of any Guaranteed Obligations is rescinded or must otherwise be returned by the Creditor upon the insolvency, bankruptcy or reorganisation of the Debtor or for any other reason whatsoever, all as though such payment had not been made.

1. **LIQUIDATION, BANKRUPTCY, ETC.**

In the event of any liquidation, winding up or bankruptcy of the Debtor (whether voluntary or compulsory) or in the event that the Debtor shall make a bulk sale of any of its assets within the bulk transfer provisions of any applicable legislation or any composition with creditors or scheme of arrangement, the Creditor shall have the right to rank in priority to the Guarantor for its claim *in re*spect of the Guaranteed Obligations and to receive all dividends or other payments *in re*spect thereof until its claim has been paid in full, all without prejudice to its claim against the Guarantor who shall continue to be liable for any remaining unpaid balance of the Guaranteed Obligations. In the event of any valuation or retention by the Creditor of any securities, such valuation or retention shall not, as between the Creditor and the Guarantor, be considered payment, satisfaction or reduction of any Guaranteed Obligations.

1. **WAIVER OF SUBROGATION RIGHTS**

In the event that the Creditor receives any payments on account of the liability of the Guarantor, the Guarantor shall not have, and waives to the extent required, all rights to claim repayment from or against the Debtor and any other guarantors and all rights to be subrogated to any rights of the Creditor, until the Guaranteed Obligations have been paid in full.

1. **TERMINATION OF FURTHER LIABILITY**

Subject to the following sentence, the Guarantor may by written notice to the Creditor, delivered to the attention of [name or position of responsible person] at the address of the Creditor set forth in this agreement or at such other address as the Creditor may from time to time designate to the Guarantor in writing, terminate any further liability *in re*spect of Guaranteed Obligations incurred by the Debtor more than [NUMBER] days (the “Notice Period”) after receipt of such notice.

The Guarantor shall remain liable for all Guaranteed Obligations incurred prior to, but maturing after, the expiration of the Notice Period and for all Guaranteed Obligations incurred after the expiration of the Notice Period pursuant to any prior commitments (express or implied) of the Creditor. This agreement shall not terminate upon the death or incapacity of the Guarantor or upon receipt by the Creditor of any notice *in re*spect thereof and the heirs, legal representatives, successors and assigns of the Guarantor shall continue to be liable, unless and to the extent that any further liability is terminated as provided in this agreement.

1. **POSTPONEMENT AND ASSIGNMENT OF CLAIMS**

All present and future debts, liabilities and obligations (collectively the “Assigned Obligations”) of the Debtor to the Guarantor are postponed to the payment of the Guaranteed Obligations and are assigned by the Guarantor to the Creditor as continuing security for the payment of the liability of the Guarantor. Any monies or other property received by the Guarantor *in re*spect of any Assigned Obligations shall be received in trust for, and immediately paid over to, the Creditor with all necessary endorsements and assignments and pending such payment shall be held separate and apart from all other property held by the Guarantor.

Any moneys received by the Creditor pursuant to this section, including monies derived from instruments and any other property, may be applied against any Guaranteed Obligations or held by the Creditor as continuing security for the liability of the Guarantor or released to the Guarantor, all as the Creditor may see fit and without prejudicing or in any way discharging or diminishing the liability of the Guarantor. In the event that the further liability of the Guarantor is terminated, the provisions of this agreement relating to the postponement and assignment of the Assigned Obligations shall continue in full force and effect until the Guaranteed Obligations have been paid in full, and the Creditor is under no obligation to make any further advances or extend any other financial accommodation to or for the benefit of the Debtor. Despite the foregoing, the Guarantor shall be entitled to receive and deal with any payments on account of any Assigned Obligations in the form of [salaries and any other permitted payments] made by the Debtor in the ordinary course of business prior to a default in the payment of any Guaranteed Obligations.

1. **NO RIGHTS OF SET-OFF**

All amounts payable by the Guarantor shall be paid without set-off or counterclaim and without any deduction or withholding whatsoever unless and to the extent that the Guarantor shall be prohibited by law from doing so, in which case the Guarantor shall pay to the Creditor such additional amount as shall be necessary to ensure that the Creditor receives the full amount it would have received if no such deduction or withholding had been made.

1. **ENTIRE AGREEMENT**

This agreement constitutes the entire agreement between the Creditor and the Guarantor with respect to the subject matter hereof and cancels and supersedes any prior understandings between such [COMPANY NAME] with respect thereto. There are no representations, warranties, conditions, agreements or understandings with respect to this agreement or affecting the liability of the Guarantor other than as set forth or referred to in this agreement.

1. **ADDITIONAL SECURITY**

This agreement is in addition and without prejudice to any security of any kind (including, without limitation, any guarantees, whether or not in the same form as this agreement) now or hereafter held by the Creditor.

1. **FURTHER ASSURANCES**

The Guarantor shall from time to time upon the request of the Creditor, execute and deliver, under seal or otherwise, all such further agreements, instruments and documents and do all such further acts and things as the Creditor may require to give effect to the transactions contemplated by this agreement.

1. **NO WAIVER, REMEDIES**

No failure on the part of the Creditor to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude the other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

1. **SEVERABILITY**

If any provision of this agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

1. **ASSIGNMENT**

The rights of the Creditor under this agreement may be assigned by the Creditor without the prior consent of the Debtor or the Guarantor. The Guarantor may not assign its obligations under this agreement.

1. **SUCCESSORS, ASSIGNS AND GOVERNING LAW**

This agreement shall enure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the Guarantor and the Creditor and shall be governed by and construed in accordance with the [YOUR COUNTRY LAW] of the province of [COUNTRY]. The Guarantor irrevocably submits to the jurisdiction of any relevant court in the country in any action or proceeding arising out of or relating to this agreement, but nothing shall prevent the Creditor from enforcing this agreement or any related judgement  against the Guarantor in any other jurisdiction.

1. **RECEIPT**

The Guarantor acknowledges receipt of a fully executed copy of this Guarantee.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# FIRST GUARANTOR CREDITOR

Authorised Signature Authorised Signature

Print Name and Title Print Name and Title

# SECOND GUARANTOR

Authorised Signature

Print Name and Title